UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MCDONALD'S USA, LLC, A JOINT EMPLOYER, et al.	**Cases 02-CA-093893, et al.** **04-CA-125567, et al.** **13-CA-106490, et al.** **20-CA-132103, et al.** **25-CA-114819, et al.** **31-CA-127447, et al.**
and	
FAST FOOD WORKERS COMMITTEE AND SERVICE EMPLOYEES INTERNATIONAL UNION, CTW, CLC, et al.	

CHARGING PARTIES' REPLY TO MCDONALD'S OPPOSITION TO CHARGING PARTIES' MOTION FOR RECUSAL OF NLRB CHAIRMAN RING AND MEMBER EMANUEL

In accordance with the NLRB's Rules and Regulations, 29 CFR §102.24(c), Charging Parties submit this Reply to McDonald's USA, LLC's ("Respondent" or "McDonald's") Opposition to Charging Parties' Motion to Recuse NLRB Chairman Ring and Board Member Emanuel ("Recusal Motion").[1]

The key facts here are simple and undisputed, despite McDonald's attempt to obscure or avoid them. This consolidated Unfair Labor Practice proceeding arose from the system-wide response by McDonald's USA and its franchisees to the Charging Parties' national "Fight for 15" organizing campaign among fast food workers. During the relevant time period, and until their recent appointments to the NLRB, Chairman Ring and Member Emanuel were principals (partners or shareholders) in the two law firms (Morgan Lewis and Littler Mendelson,

[1] This case is currently before the Board on McDonald's and the NLRB General Counsel's respective Requests for Special Permission to Appeal the July 17, 2018 Order of the Administrative Law Judge Denying Approval of the Settlement Agreements ("Special Appeal Requests"), filed on August 13 and August 14, 2018. Charging Parties filed their Recusal Motion on August 14, 2018, and McDonald's filed its Opposition on August 21, 2018.

respectively) retained by McDonald's to provide coordinated legal advice and guidance for all McDonald's restaurants on how to react to the "Fight for 15" campaign activity. Moreover, the prospect of litigation arising from these circumstances was clearly contemplated at the time: among other things, McDonald's franchisees were required to and did sign joint-defense agreements with respect to the legal services provided by Morgan Lewis.[2]

Thus, McDonald's and other named Respondents in this case are or were clients of both Chairman Ring's and Member Emanuel's most recent law firms, represented by those firms with respect to the very circumstances involved in this case. And McDonald's pending Special Appeal Request now asks the Board to order final disposition terminating the entire case, with dismissal of all outstanding ULP complaints, on the contested terms advocated by McDonald's and all Franchisee-Respondents. As shown in our Recusal Motion, a "reasonable person with knowledge of the relevant facts" would question Chairman Ring's and Member Emanuel's impartiality with respect to this singular and conclusive decision.

McDonald's nonetheless argues that Chairman Ring and Member Emanuel do not need to recuse themselves now because they did not personally represent the Respondents while partners at Morgan Lewis and Littler Mendelson, and because the Respondents here used *other* law firms to appear and defend them in the formal ULP proceedings arising from the Charging Parties' "Fight for 15" campaign. But the mere fact that a litigating party was represented by an NLRB Member's former law firm only at the pre-litigation stage does not eliminate the appearance of partiality when that Morgan Lewis or Littler Mendelson client (now defendant) comes before its

[2] In addition, during the trial proceedings in this case McDonald's and other Respondents repeatedly asserted the attorney-client privilege and other legal privileges—including common interest and work product prepared in anticipation of litigation) with respect to records of communications between and among representatives of McDonald's and its franchisees during the relevant period, which included 2013-2014.

law firm's former partner (now adjudicator) represented by a different law firm as its counsel of record in the ensuing litigation. To accept this attempted dodge would make a mockery of governing ethics principles and would show the Board's recent, publicly announced undertaking of a comprehensive ethics/recusal review to be at best a cosmetic gesture.

McDonald's remaining opposition arguments are equally baseless. Neither the federal courts nor the Respondent's cited Board cases have adopted the purported "waiver" bar to our recusal motion that McDonald's urges here. Moreover, as demonstrated below, this is not a case in which the moving party has "gamed" the system or wasted judicial resources by moving for reconsideration and disqualification of the presiding judge only after that judge decided the case against it.

For all of the reasons set forth in Charging Parties' motion, Chairman Ring and Member Emanuel must recuse themselves from consideration of the pending Requests for Permission to Appeal given the legal representation their former law firms provided to the Respondents in this case.

A. <u>THE FACT THAT MORGAN LEWIS AND LITLER MENDELSON REPRESENTED MCDONALD'S AND ITS FRANCHISEES DURING THE RELEVANT PERIOD, BUT WITHOUT APPEARING AS COUNSEL OF RECORD IN THIS CASE, DOES NOT ABSOLVE CHAIRMAN RING AND MEMBER EMANUEL FROM RECUSAL OBLIGATIONS HERE</u>

As McDonald's recognizes, Executive Order 13770 (the Trump Ethics Pledge) required the following commitment by Chairman Ring and Member Emanuel:

> I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is *directly and substantially related to* my former employer or former clients, including regulations and contracts.

McDonald's Opp. at 8, n.18 (citing Executive Order 13770, § 1(6); 82 FR 9333 (Jan 28, 2017)) (emphasis added). *See* Recusal Motion at 1-2. The Executive Order further defines the disqualifying terms as follows:

> "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

See Executive Order 13770, § 2(d). While acknowledging this requirement, McDonald's incorrectly reads it as applying only where Chairman Ring and Member Emanuel, during their time as Morgan Lewis and Littler Mendelson partners, *personally* represented the Morgan Lewis or Littler Mendelson client(s) who now appear before the Board. *See* McDonald's Opp. at 9.

Even Chairman Ring has publicly disavowed McDonald's argument that his recusal obligation is limited to disputes in which he personally represented a party. Thus, during the confirmation process nominee Ring asserted his intention to avoid casting any ethical "cloud over the NLRB" and expressly verified his understanding that the ethics rules require him to recuse himself for a period of two years "from any matter in which [his] former firm Morgan Lewis represents a party."[3] Following that verification, Senator Warren immediately requested from Ring a list of Morgan Lewis clients where Morgan Lewis represents parties before the NLRB—not a list of clients for which Ring *personally* acted as attorney. And Ring likewise disclaimed in writing any narrow "personal representation" limitation, further emphasizing that

[3] *See* C-Span video excerpt from March 1, 2018 Senate hearing, testimony of Chairman Ring at minute 1:00, available at https://www.c-span.org/video/?c4744098/john-ring-nlrb-testimony-recusal-promise (also referring to the recent ethical controversy in *Hy-Brand* and emphasizing intention to avoid situations like that which "cast a shadow on the good work of the board").

"[a]s I expressed during my confirmation hearing, I view the avoidance of conflicts of interest as one of the primary responsibilities of a board member."[4]

In addition to contradicting Chairman Ring's stated understanding of his ethical responsibilities, McDonald's compounds its error by urging yet another unjustified narrowing of Executive Order 13770. Specifically, McDonald's equates the ethical obligations of currently serving NLRB appointees with the different requirements governing former executive branch employees after their separation from government service, including post-departure restrictions on seeking to influence officers and agency personnel. *See* McDonald's Opp. at 9 (citing 18 U.S.C. § 207(a)). Based on that misplaced equivalence, McDonald's argues that the Trump Ethics Pledge requires NLRB appointees to recuse themselves only from matters in which a Board Member's former law firm appears as counsel of record. Not surprisingly, McDonald's cites no reported decisions or other persuasive authority for this claim.

---

[4] *See* National Law Journal, "Inside a Morgan Lewis Partner's New Conflicts Disclosures" (Mar. 7, 2018), https://www.law.com/nationallawjournal/2018/03/07/inside-a-morgan-lewis-partners-new-conflicts-disclosures-for-nlrb-post/?slreturn=20180727143105. Chairman Ring's written responses confirmed that neither his recusal commitment nor his Morgan Lewis client list was limited to his "personal" involvement in the client representation. *See* "Questions for the Record," available at https://drive.google.com/file/d/1hvhc-xGBC03a7Hd5fWLmr2nNN22bhzMk/view, and "Addendum A," available at https://drive.google.com/file/d/1exsVNY799vIp-x6-DgM7NdG6J0Up4GU_/view. Chairman Ring's pre-confirmation financial disclosure form reported $2.7 million in partnership and bonus income from Morgan Lewis and did not identify any "Chinese Wall" or similar restriction on participating in or benefiting from Morgan Lewis revenues attributable to services provided to McDonald's and its franchisees. *See* OGE Form 278e, available at https://doc-00-a0-apps-viewer.googleusercontent.com/viewer/secure/pdf/3nb9bdfcv3e2h2k1cmql0ee9cvc5lole/9ur6tvlo25pv9s1cjo8ksfgupo94gi1i/1535401875000/drive/*/ACFrOgA2orNOlbfmdejPfDJFG6hmMVpJsPno66hnW4MUAutWRpJ23rpVavd0gFSxmqVJlM_J3THVylm2bH7gzAMtGAjdIYL2X52eNHQdVKrKDFRnShEGClEpiS-60-c=?print=true; National Law Journal, "John Ring of Morgan Lewis, Trump Pick for NLRB, Discloses $2.7M Partner Share" (Jan. 26, 2018), available at https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/01/26/john-ring-of-morgan-lewis-trump-pick-for-nlrb-discloses-2-7m-partner-share/?cmp=share_twitter.

The relevant ethics rules, we submit, were not formulated with such limited reach and effect. As previously noted, Title 5 Part 2635 of the Code of Federal Regulations reinforces and amplifies the Executive Order by requiring appointees to "avoid any actions creating the appearance that they are violating the law or the ethical standard set forth [in § 2635.502]." 5 C.F.R. § 2635.101(b)(14). Those stringent expectations include refraining from participating in any matter where "the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter." 5 C.F.R. § 2635.502(a). Applying the Executive Order and ethics rules in the manner urged by McDonald's here would manifestly subvert the goal of maintaining public trust in fair, truly disinterested decision-making by federal appointees. Under McDonald's approach, any party to an NLRB proceeding could retain labor and employment law firm "X" to advise them on a given situation or issue, while selecting a different law firm "Y" to handle whatever formal ULP charges or Representation proceedings may arise, and be assured of full participation by any law firm "X" partner who leaves that firm to take a position on the Board—where she can rule on the legal advice given by her former law firm. Such circumstances would raise unavoidable concerns regarding that adjudicator's perceived partiality.

The trial record in the present case provides extensive documentation of the same circumstances raising the same questions and concerns about impartiality. McDonald's retained the legal services of Morgan Lewis to provide a comprehensive national training program for Franchisee Respondents in reaction to the Fight for $15 organizing campaign, for which Respondent Franchisees were required to sign joint-defense agreements.[5] During the same

[5] *See*, *e.g.*, Tr. 1863, 1866-68, 6565-69; G.C. Ex. HR 94, 94.1, 204, 369, 526, 528, 550; Tr. 12677-78, 15296-98, 16701-02, G.C. Ex. HR 800.2 (New York); Tr. 3007-09, 3018-20, 3046-47, 3049-55, 3064-68, 3071, 3120-30, 3138-39, 3145, 10415-17, 10437, 12936-37, G.C.

period, McDonald's retained Littler Mendelson to provide the Franchisee Respondents with a national hotline service providing legal crisis-counselling in response to the Fight for $15 organizing campaign.[6] This is not a case where a Board Member's former law firm represented a party on non-labor matters or in disputes wholly unrelated to the pending NLRB proceeding. Rather, as confirmed by the testimony and exhibits cited in footnotes 5 and 6, *infra*, and illustrated by the examples appended as Exhibit A to this Reply, both Morgan Lewis and Littler Mendelson unquestionably served *as counsel* to McDonald's and its franchisees and counseled them in connection with *this case*. McDonald's cannot plausibly argue that the two Board Members who were partners/shareholders in the labor law firms McDonald's retained to advise the Respondents and protect their common legal interests in this very matter—and who are now being asked to decide the fate of the entire McDonald's ULP case—can avoid recusal simply because a different law firm serves as counsel of record in the litigation.[7]

Finally, we emphasize that McDonald's opposition brief patently misreads and misapplies *SEIU, Nurses Alliance, Local 121 RN (Pomona Valley Hospital and Medical Center)*, 355 NLRB 234, 238-46 (2010). *See* McDonald's Opp. at 3, 12. For example, McDonald's argues

---

Ex. BC 176, HR 605.1, 605.2, 605.3, 605.4, 605.5, 608.1, 642, 649, 654, 655, 825 (Chicago); Tr. 2104-07, 2011-14, 2164-65, 2285-88, G.C. Ex. HR 369, 370, 394 (Indianapolis); Tr. 3508, 3514-15, 3518-21, 3523-26, 3536, 3549-50, 10466, G.C. Ex. HR 303, 304, 304.1-304.4, 305, 307, 321, 395, 396, 846 (Sacramento); Tr. 4065, 13001-02, 13004, 13331-33, G.C. Ex. BC 1950, HR. 526 (Los Angeles).

[6] *See, e.g.*, GC Ex. HR 83, 753, 382, 640 and HR 74 (flyer adverting the Littler hotline states "Get Quick Answers to Basic Questions about Labor Law and Access Rights/Limits" and indicates that calls to Littler are free for McDonald's franchisees who may have questions about the union's solicitation efforts); Tr. 1880-82, 1935-36, 2179-80, 2913-15, 6789-90.

[7] In recognition of this obvious problem, McDonald's ignores a key fact that compels recusal of Chairman Ring—*i.e.*, that Franchisee Respondents signed joint-defense agreements with Chairman Ring's former law firm, Morgan Lewis, in connection with this very case. *See* n.5, *supra.* Frankly, with respect to Chairman Ring, the inquiry should end right there.

that since former SEIU counsel and employee Craig Becker in *Pomona Valley* found no basis to recuse himself from NLRB proceedings involving SEIU-affiliated local unions that neither he nor any other SEIU staff lawyers had ever represented in any capacity (litigation or non-litigation), Chairman Ring and Member Emanuel need not abstain from participating in this NLRB case against Respondents who were, in fact, represented by both Ring's and Emanuel's former law firms in connection with the circumstances giving rise to this case. McDonald's Opp. at 12-13.[8] That misplaced analogy has neither logical nor legal force. It suffices to note that if, for example, SEIU had previously retained Member Becker or his fellow SEIU Legal Department employees to advise SEIU and several affiliated local unions in an organizing campaign, under a common defense agreement, as McDonald's did here with Morgan Lewis, the *Pomona Valley* decision reflects Member Becker's readiness to recuse himself from participation in the ensuing NLRB proceedings. *See* 355 NLRB at 242.[9]

[8] McDonald's also quotes, out of context, a portion of the *Pomona Valley* ruling in which Member Becker distinguished his prior positions as a law professor and advocate from his role as a Board member; the quoted statement was part of the discussion rejecting the claim that Member Becker was biased against the National Right to Work Legal Defense Foundation and their counsel (which provided assistance to a charging party) because he authored briefs in other cases many years prior to the request for recusal. *See* McDonald's Opp. at 3 (quoting from *Pomona Valley*, 355 NLRB at 246). That *non sequitur* has no plausible bearing on the circumstances justifying Chairman Ring's and Member Emanuel's recusal in this case.

[9] Likewise, assuming for example that Morgan Lewis and Littler Mendelson had represented and advised only McDonald's, not its franchisees, Chairman Ring and Member Emanuel would not face the recusal grounds asserted here in a hypothetical NLRB case involving only a non-client franchisee and no allegations involving their law firms' client, McDonald's. By contrast, one would expect Chairman Ring or Member Emanuel to recuse themselves from consideration of an ordinary ULP case where, for example, the respondent employer had retained Morgan Lewis or Littler Mendelson to advise them in collective bargaining but later retained Jones Day to represent the employer in defending a Section 8(a)(5) bad-faith bargaining case arising from the negotiations. The present case, while much larger in scope and higher in profile, presents substantially the same situation and calls for the same result.

In short, the direct involvement of Morgan Lewis and Littler Mendelson as counsel to McDonald's and its franchisees in the nationwide McDonald's labor dispute presents a situation compelling recusal by Chairman Ring and Member Emanuel from participation in the pending Requests for Permission to Appeal.

B. MCDONALD'S "WAIVER" ARGUMENT CANNOT JUSTIFY DISISSAL OF CHARGING PARTIES' RECUSAL MOTION WITH RESPECT TO MEMBER EMANUEL

McDonald's mistakenly contends that Charging Parties waived the right to challenge Member Emanuel's participation here because they failed to raise any ethical objection immediately after his appointment to the Board, when McDonald's sought to appeal certain procedural/evidentiary rulings by the ALJ. *See* McDonald's Opp. at 7 (citing McDonald's October 9, 2017 special request for permission to appeal and the Board's subsequent Jan. 16, 2018 Order at 2). Contrary to McDonald's assertions, there is no rigid rule—in the NLRB or the federal judiciary—requiring that grounds for recusal be raised before an adjudicator participates in any way in the case.

Quite the opposite, both of the decisions cited by McDonald's are fact-specific and easily distinguished cases in which a losing party sought to vacate the adverse ruling by disqualifying a Board Member or a judge only *after* the tainted decision-maker had issued that dispositive ruling. *Somerset Valley Rehab. & Nursing Ctr.*, No. 22-RC-13139, Order Denying Motion at 3, 4-5 (NLRB Nov. 16, 2011)[10]; *Schurz Commc'ns, Inc. v. F.C.C.*, 982 F.2d 1057, 1060 (7th Cir. 1992) (Posner, ruling on motion pursuant to specific statute not applicable here). And while different courts may take differing approaches when considering the timing of judicial disqualification motions, no circuit has espoused the hardline rule McDonald's insists on here.

[10] Available at https://www.nlrb.gov/cases-decisions/unpublished-board-decisions (last visited Aug. 27, 2018).

Indeed, even the Seventh Circuit, the touchstone invoked by McDonald's, made it clear in another case that there is *no time limit* within which disqualification must be sought. *See SCA Servs., Inc. v. Morgan*, 557 F.2d 110, 117 (7th Cir. 1977) (issuing a writ of mandamus directing judge to disqualify himself notwithstanding "the numerous proceedings which have been had in this case since [movant] learned of" the grounds for disqualification.); *see also Polaroid Corp. v. Eastman Kodak Co.*, 867 F.2d 1415, 1418 (Fed. Cir. 1989) (finding no timeliness requirement).

The only NLRB authority McDonald's cites in support of its recusal-waiver argument, *Somerset Valley*, involved an employer's attempt to vacate the Board's final decision and certification of representative by filing a motion for reconsideration alleging that Member Becker had improperly participated in that adverse decision. *See* McDonald's Opp. at 1 and 7-8 (citing *Somerset Valley Rehab. & Nursing Ctr.*, 22-RC-13139 (2011)). Member Becker declined to recuse himself in that instance because the employer had waited until after receiving the Board's adverse decision and then raised disqualification as a "heads-I-win-tails-you-lose" gambit to overturn that decision. *See Somerset Valley*, Order at 4. The present case involves no such circumstances.

The Charging Parties here are not losing parties belatedly invoking disqualification to vacate a dispositive adverse decision. On the contrary, they filed their Recusal Motion well before any such dispositive decision could issue from the Board; indeed, the Motion was presented before the Board could even begin to address McDonald's and the General Counsel's Special Appeal Requests, given its filing before the deadline for full briefing on those requests. Thus, this cannot be deemed a case of a litigant "waiting to see whether they win and if they lose moving to disqualify a judge who voted against them." *Somerset Valley*, at 4 (quoting *Schurz Commc'ns*, 982 F.2d at 1060).

Moreover, the litigation history in this case refutes any suggestion that the Recusal Motion was interposed after the fact as a means of overturning an adverse ruling. In January 2018 Member Emanuel participated in a panel decision ruling *in favor* of the Charging Parties on the only issue they litigated before the Board—specifically, their opposition to McDonald's October 9, 2017 special request to appeal the ALJ's decision revoking a second set of subpoenas serving document requests substantially identical to those the ALJ had rejected over two years earlier.[11] McDonald's also sought to appeal the ALJ's concurrent order requiring a written expert report, and Member Emanuel participated in that matter as well. But, contrary to McDonald's assertion, Charging Parties did not oppose McDonald's special appeal request challenging that ALJ ruling. And the Board's decision on that issue, concluding that the ALJ exceeded her authority in requiring an expert report, was not adverse to the Charging Parties: their position was and continues to be that the trial in this case should proceed to conclusion with or without McDonald's designated expert witness and/or his report.[12]

In short, the only pertinent Board proceeding predating the Recusal Motion yielded a favorable ruling for the Charging Parties in a minor row over McDonald's unsuccessful attempt to reopen a previously litigated and previously decided evidentiary dispute. Charging Parties' failure to challenge Member Emanuel's participation at that point does not foreclose their current Recusal Motion under applicable Board precedent.

---

[11] In April 2015 the ALJ granted, in part, petitions to revoke the first batch of document subpoenas served by McDonald's on the Charging Parties and several non-parties; McDonald's sought Board review by special appeal, and the Board denied McDonald's appeal on the merits. *See McDonald's USA, LLC*, 363 NLRB No. 144 (Mar. 17, 2016).

[12] *See, e.g.*, Charging Parties' Opposition to General Counsel's Motion to Stay Proceedings (Jan. 18, 2018); Charging Parties' Post-Hearing Brief in Opposition to Proposed Settlement Agreements (Apr. 27, 2018); Charging Parties' Reply Brief in Opposition to Proposed Settlement Agreements (May 4, 2018).

Finally, application of judicial disqualification law, by analogy, confirms that the Charging Parties' Recusal Motion qualifies as timely. As noted above, prevailing federal authority rejects the categorical waiver rule urged by McDonald's. *Supra* at 9-10. Even the more stringent courts apply a case-specific factual analysis of timeliness, aimed at preventing strategic misuse of recusal motions. *See, e.g., Kolon Indus. Inc. v. E.I. DuPont de Nemours & Co.*, 748 F.3d 160, 170 (4th Cir. 2014) (finding recusal motion untimely where party sought recusal after adverse jury verdict) ("[W]e should not ignore the harm that would ensue if litigants were permitted to treat motions for recusal as little more than a stratagem.").[13] The Charging Parties have not abused or strategically misused recusal in this case, and McDonald's argument to the contrary would rob the timeliness factor of any nexus to the very interest it serves.

As emphasized above, the Charging Parties submitted their Recusal Motion on August 14, 2018, immediately upon McDonald's and the General Counsel's filing of Special Appeal Requests—the first and only requests seeking a dispositive Board ruling that would foreclose

[13] Decisions from other circuits make the multi-factor, case-by-case analysis explicit. The Federal Circuit, in holding that motions to recuse need not satisfy a timeliness requirement, reasoned that "the concept of 'timeliness' merges into and is subsumed in the concepts of 'equity', 'fairness', and 'justice.'" *Polaroid Corp.*, 867 F.2d at 1418-19. The Ninth Circuit employs a reasonableness test: "While no *per se* rule exists regarding the time frame in which recusal motions should be filed after a case is assigned to a particular judge, if the timeliness requirement is to be equitably applied, recusal motions should be filed with reasonable promptness after the ground for such a motion is ascertained." *United States v. Bosch*, 951 F.2d 1546, 1552 (9th Cir. 1991) (finding that judge's decision not to recuse was plain error and vacating conviction where party moved for recusal for the first time on appeal of conviction). The Third Circuit considers the timeliness of a motion for recusal "but one of the factors which engages a court's discretion in determining whether a judge shall be relieved from its assignment." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 312 (3d Cir. 2004) (finding motion for recusal timely). The Second Circuit applies a four-factor test to determine whether a motion to recuse is untimely, asking whether: "(1) the movant has participated in a substantial manner in trial or pre-trial proceedings; (2) granting the motion would represent a waste of judicial resources; (3) the motion was made after the entry of judgment; and (4) the movant can demonstrate good cause for delay." *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768, 794-95 (2d Cir. 2002) (finding that party's delay in filing motion to recuse was not "enough to extinguish irrevocably her right to pursue a recusal claim.").

completion of trial and terminate this landmark case. Moreover, the Recusal Motion was filed at a point when it became apparent that no disinterested three-Member panel could be constituted to decide the pending appeal requests.[14] Although McDonald's insists that the Union forever lost its right to seek Member Emanuel's recusal once Member Emanuel participated in the Board's January 2018 ruling on McDonald's special appeal addressing certain discovery matters, that position is novel and unsupported by law. As we have demonstrated, the Charging Parties do not seek Member Emanuel's recusal in order to abrogate his rulings on subpoenas and an expert report; rather, they seek only to vindicate their right to an unbiased panel in prospective determinations.

In sum, the Charging Parties here moved promptly and appropriately to ensure a fair and impartial Board decision addressing a controversial global settlement in the largest case in Agency history. Their Recusal Motion is timely and must be decided on its merits.

CONCLUSION

No reasonable person with knowledge of the role Morgan Lewis and Littler Mendelson played in combating the Fight for $15 campaign could ignore their admitted service as counsel to McDonald's and respondent franchisees, providing them legal advice and representing their interests in this matter. The direct involvement of Chairman Ring's and Member Emanuel's respective law firms in the circumstances giving rise to this case presents a unique situation that demands recusal from a potentially dispositive ruling determining the fate of the McDonald's

[14] The expiration of Member Pearce's term on August 27 would reduce the Board to four Members, including the two Members subject to this Recusal Motion; thus, any three-Member panel would comprise at least one of the two conflicted Members. By contrast, in October 2017, when the preceding McDonald's appeal requests came before the Board, and until April 2018, only one of the sitting Board Members was conflicted, and a tainted panel was not inevitable. To the best of our knowledge, Member Emanuel has not participated in any aspect of the McDonald's case between January 16, 2018 and August 2018.

litigation. For all the foregoing reasons, and those set forth in Charging Parties' Motion for Recusal, Chairman Ring and Member Emanuel must recuse themselves from deciding McDonald's and the General Counsel's Special Request for Permission to Appeal the ALJ's July 17 Order.

August 28, 2018

Respectfully submitted,

Mary Joyce Carlson
1100 New York Ave., NW, Suite 500 West
Washington, DC 20005
Tel: 202-230-4096
carlsonmjj@yahoo.com

Kathy L. Krieger
JAMES & HOFFMAN, P.C.
1130 Connecticut Avenue, N.W., Suite 950
Washington, DC 20036
Tel: 202-496-0500
Fax: 202-496-0555
klkrieger@jamhoff.com

Micah Wissinger
LEVY RATNER, P.C.
80 Eighth Avenue, 8th Floor
New York, NY 10011
Tel: 212-627-8100
Fax: 212-627-8182
mwissinger@levyratner.com

Counsel for Charging Parties

CERTIFICATE OF SERVICE

I, Kathy L. Krieger, affirm under penalty of perjury that on August 28, 2018, I caused a true and correct copy of the foregoing Charging Parties' Reply to McDonald's Opposition to Charging Parties' Motion for Recusal of NLRB Chairman Ring and Member Emanuel to be filed electronically filed with the Executive Secretary of the National Labor Relations Board and served on the same date via electronic mail at the following addresses:

Willis J. Goldsmith, Esq.
Ilana R. Yoffe, Esq.
Justin Martin, Esq.
Jones Day
250 Vesey Street
New York, NY 10281-1047
wgoldsmith@jonesday.com
iyoffe@jonesday.com
jmartin@jonesday.com

Barry M. Bennett, Esq.
George A. Luscombe, III, Esq.
Dowd, Bloch, Bennett & Cervone
8 South Michigan Avenue 19th Floor
Chicago, IL 60603-3315
bbennett@dbb-law.com
gluscombe@dbb-law.com

Robert Brody, Esq.
Kate Bogard, Esq.
Alex Friedman, Esq.
Lindsay Rinehart, Esq.
Brody & Associates, LLC
102 Post Road West, Suite 101
Westport, CT 06880
rbrody@brodyandassociates.com
kbogard@brodyandassociates.com
afriedman@brodyandassociates.com
lrinehart@brodyandassociates.com

Jonathan Cohen, Esq.
Eli Naduris-Weissman, Esq.
Rothner, Segall & Greenstone
510 South Marengo Avenue
Pasadena, CA 91101-3115
jcohen@rsglabor.com
enaduris-weissman@rsglabor.com

Michael S. Ferrell, Esq.
Jonathan M. Linas, Esq.
E. Michael Rossman, Esq.
Jones Day
77 W. Wacker Drive, Suite 3500
Chicago, IL 60601-1692
mferrell@jonesday.com
jlinas@jonesday.com
emrossman@jonesday.com

Claude Schoenberg, Esq.
Schoenberg Law Office
2 Bala Plaza, Suite 300
Bala Cynwyd, PA 19004
claude.schoenberg@me.com

Steve A. Miller, Esq.
James M. Hux, Jr., Esq.
Fisher & Phillips, LLP
10 S. Wacker Drive, Suite 3450
Chicago, IL 60606-7592
smiller@laborlawyers.com
jhux@laborlawyers.com

Jeffrey A. Macey, Esq.
Robert A. Hicks, Esq.
Macey Swanson and Allman
445 North Pennsylvania Street Suite 401
Indianapolis, IN 46204-1893
jmacey@maceylaw.com
rhicks@maceylaw.com

Sean D. Graham, Esq.
Weinberg, Roger & Rosenfeld, P.C.
800 Wilshire Boulevard, Suite 1320
Los Angeles, CA 90017-2623
sgraham@unioncounsel.net

Roger K. Crawford, Esq.
Best, Best & Krieger, LLP
2855 East Guasti Road, Suite 400
Ontario, CA 91761
roger.crawford@bbklaw.com

Thomas O'Connell, Esq.
Ashley Ratliff, Esq.
Jaqueline Yaeger, Esq.
Best, Best & Krieger, LLP
3390 University Avenue, Floor 5
Riverside, CA 92501
thomas.oconnell@bbklaw.com
ashley.ratliff@bbklaw.com
jacqueline.yaeger@bbklaw.com

Louis P. DiLorenzo, Esq.
Tyler T. Hendry, Esq.
Patrick V. Melfi, Esq.
Bond, Schoeneck & King, PLLC
600 Third Avenue
New York, NY 10016
ldilorenzo@bsk.com
thendry@bsk.com
pmelfi@bsk.com

Nicole G. Berner, Esq.
1800 Massachusetts Avenue, NW
Washington, DC 20036
Nicole.Berner@seiu.org

Michael J. Healey, Esq.
Healey & Hornack, P.C.
247 Fort Pitt Boulevard, Floor 4
Pittsburgh, PA 15222
mike@unionlawyers.net

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
2 Bala Plaza, Flr 3, Suite 300
Bala Cynwyd, PA 19004
jahirsch@hirschfirm.com

Deena Kobell, Esq.
National Labor Relations Board - Region 4
615 Chestnut Street 7th Floor
Philadelphia, PA 19106-4404
deena.kobell@nlrb.gov

Edward Castillo, Esq.
Christina Hill, Esq.
Elizabeth Cortez, Esq.
Sylvia Taylor, Esq.
National Labor Relations Board, Region 13
209 South La Salle Street, Suite 900
Chicago, IL 60604-1443
edward.castillo@nlrb.gov
christina.hill@nlrb.gov
elizabeth.cortez@nlrb.gov
sylvia.taylor@nlrb.gov

Richard McPalmer, Esq.
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
richard.mcpalmer@nlrb.gov

Christopher Cullen, Esq.
National Labor Relation Board
Division of Legal Counsel
1015 Half Street, SE
Washington, DC 20570
Christopher.cullen@nlrb.gov

Jamie Rucker, Esq.
Jacob Frisch, Esq.
Alejandro Ortiz, Esq.
Nicholas A. Rowe, Esq.
Nicole Lancia, Esq.
Zachary E. Herlands, Esq.
National Labor Relations Board - Region 2
26 Federal Plaza Room 3614
New York, NY 10278-0104
jamie.rucker@nlrb.gov
jacob.frisch@nlrb.gov
alejandro.ortiz@nlrb.gov
nicholas.rowe@nlrb.gov
nicole.lancia@nlrb.gov
Zachary.Herlands@nlrb.gov

Brian Gee, Esq.
John Rubin, Esq.
Rudy Fong-Sandoval, Esq.
National Labor Relations Board, Region 31
11500 W. Olympic Boulevard, Suite 600
Los Angeles, CA 90064
brian.gee@nlrb.gov
john.rubin@nlrb.gov
rudy.fong-sandoval@nlrb.gov